

No. 2023-1093, 2023-1141

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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VANDEWATER INTERNATIONAL INC.,

Plaintiffs,

SIGMA CORPORATION, SMITH-COOPER INTERNATIONAL, INC.,

Plaintiffs-Appellants,

v.

UNITED STATES,

Defendant-Appellee,

ISLAND INDUSTRIES,

Defendant.

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Appeal from the United States Court of International Trade in  
Case No. 1:18-cv-00199, Senior Judge Leo M. Gordon

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**DEFENDANT-APPELLEE'S CONSENT MOTION TO  
ENLARGE THE WORD LIMIT FOR THE RESPONSE BRIEF**

Pursuant to Federal Circuit Rule 26(b), defendant-appellee, the United States, respectfully requests that the Court grant an enlargement to the word limit for the Government's consolidated response brief in these appeals to 18,000 words. The response brief is currently due on April 20, 2023, and is limited under the

Court's rules to 14,000 words. We have not previously requested an enlargement to the word limit. We have conferred regarding this request with counsel for the other parties to these appeals by contracting them via email on April 10, 2023, and each consented by email to our request.

Good cause exists to grant the relief we are requesting for several reasons. First, the word-limit enlargement is necessitated by the volume of information and arguments in the two opening briefs to which we must respond. In particular, the appellants' separate opening briefs—which raise several distinct claims—total approximately 22,151 words (or approximately 26,131 words if one were to count the materials that appellant Sigma Corporation adopts from the brief of appellant Smith-Cooper International, Inc. and includes in the overall word count for its opening brief). Even in areas in which appellants' overall claims overlap, their separate briefs present distinct arguments that we must address separately in our consolidated response brief. The word-limit enlargement we are requesting is thus necessary to respond to appellants' numerous claims and arguments, while nonetheless remaining significantly lower than the volume of the opening briefs.

Second, a word-limit enlargement is necessary because the posture of this appeal and the arguments that appellants make require us to address the case's complex procedural history, which is intertwined with appellants' claims. The need to do so affects the anticipated length of our consolidated response brief.

Third, consistent with this Court's rules, we anticipate addressing in our consolidated response brief the parties disagreements' concerning the scope of the record and issues that are properly before this Court on appeal. *See* Fed. Cir. R. 27(e) (motion to strike prohibited when party has right to file responsive brief in which objection can be made). This is an additional factor that we anticipate affecting the length of our consolidated response brief.

Overall, the enlargement to the word limit we are requesting will enable us to best assist the Court in resolving the issues presented on appeal.<sup>1</sup> Accordingly, we respectfully request that the Court enlarge the word limit for the Government's response brief in this appeal to 18,000 words.

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant  
Attorney General

PATRICIA M. McCARTHY  
Director

/s/ L. Misha Preheim  
L. MISHA PREHEIM  
Assistant Director

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<sup>1</sup> We also note in this regard that the United States Court of Appeals for the Ninth Circuit has now issued an order holding in abeyance the appeal in *Island Industries, Inc., et al. v. Sigma Corp.*, Ninth Cir. No. 22-55603, pending the decisions in this appeal and in a separate Supreme Court case. *See* Ninth Cir. No. 22-55603, Dkt. Entry No. 69 (March 27, 2023).

/s/ Joshua E. Kurland  
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April 11, 2023

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 27(d)(2)(A) of the Rules of the United States Court of Appeals for the Federal Circuit, respondent's counsel certifies that this motion complies with the Court's type-volume limitation rules. According to the word count calculated by the word processing system with which this motion was prepared, the motion contains a total of 469 words.

/s/ Joshua E. Kurland